

UNITED STATES DISTRICT COURT

for the
Western District of North Carolina

United States of America)	
v.)	
Michael Graylen Wheeler)	Case No: <u>5:04CR66</u>
)	USM No: <u>20177-058</u>
Date of Original Judgment: <u>September 10, 2007</u>)	
Date of Last Amended Judgment: <u>April 17, 2009</u>)	<u>Ross Richardson</u>
)	Defendant's Attorney

Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ **is reduced to** _____

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Original Offense Level: <u>23</u>	Amended Offense Level: <u>19</u>
Criminal History Category: <u>VI</u>	Criminal History Category: <u>VI</u>
Original Guideline Range: <u>92 to 115 months</u>	Amended Guideline Range: <u>63 to 78 months</u>

II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- ☐ The reduced sentence is within the amended guideline range.
- ☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing and the reduced sentence is comparably less than the amended guideline range.
- ☐ The reduced sentence is above the amended guideline range.

☒ Other (explain): On April 17, 2009, on consideration under Amendment 706, the Court reduced the Defendant's sentence for Count Two, to 77 months custody, (the low end of the revised guideline). Since the reduction in April 2009, the Defendant incurred infractions in September and December 2009, of Possessing a Dangerous Weapon, and Being in Unauthorized Area. In addition, in March, April, and September 2010, the Defendant incurred more infractions including; Possessing Intoxicants, Being Absent from Assignment, and again, Possessing Intoxicants. After reviewing the Defendant's disciplinary record while incarcerated, the Court in its discretion, declines any further reduction. The Defendant is also serving a consecutive sentence in Count Three on a conviction of 18 U.S.C. §924(c).

III. ADDITIONAL COMMENTS

Except as provided above, all provisions of the judgment dated September 10, 2007, shall remain in effect.

IT IS SO ORDERED.

Order Date: February 1, 2012

Effective Date: February 1, 2012
(if different from order date)



Richard L. Voorhees
United States District Judge



